I was doubtful at the time I made the order whether under sub-section (1) of section 19 of the Registration and Licensing of Businesses Ordinance, 1953 a term of imprisonment was mandatory. On further consideration of the provisions of that section I am of opinion that for any of the offences mentioned in that sub-section a term of imprisonment must be imposed in addition to a fine.

Order accordingly.

PL. RM. FAMILY & P. V. FAMILY v. THE COMPTROLLER OF INCOME TAX

[P. C. (Lord Morton of Henryton, Lord Radcliffe, Lord Keith of Avonholm, Lord Somervell of Harrow and Mr. L. M. D. de Silva) July 5, 1955]

[Privy Council Appeal No. s. 21 & 22 of 1954]

Income Tax Ordinance, 1947, ss. 10(1) and 14 — Revaluation claims under Debtor and Creditor (Occupation Period) Ordinance, 1948 — Irrecoverable amounts not deductible from profits of later years.

These were appeals from the judgment of the Court of Appeal of the Federation of Malaya reported in (1953) M.L.J. 156. The question for decision was whether or not the appellants, in computing their liability to income tax for the year of assessment 1951, were entitled to deduct from their profits the difference between the amounts which they had entered in their accounts in respect of their claims under the Debtor and Creditor (Occupation Period) Ordinance, 1948, and the amounts which they ultimately accepted in settlement of such claims.

Held: there was in fact no real losses in these cases as there was no evidence to show that the claims of the appellants were worth more on December 31, 1949, than the sums which were ultimately accepted in full settlement by them.

PRIVY COUNCIL APPEAL.

Henry Salt Q.C. (*W. Lindsay* with him) for the appellants.

Roderick Watson for the respondent.

Lord Morton of Henryton : — This is an appeal from orders of the Court of Appeal, Supreme Court of the Federation of Malaya, in two suits which raised the same point of law and were consolidated, for the purpose of this Appeal, by Order dated 17th June, 1954.

The question of law to be decided is whether or not the appellants, in computing their liability to income tax for the year of assessment 1951, are entitled to deduct from their profits the difference between the amounts which they had entered in their accounts in respect of their claims under the Debtor and Creditor (Occupation Period) Ordinance, 1948, and the amounts which they ultimately accepted in settlement of such claims.

The Ordinance of 1948 came into force on the 1st October, 1949, and was directed to readjusting the position, as debtor and creditor, where debts had been paid off, during the Japanese occupation of Malaya, in currency issued by the occupying power. Section 2 of the Ordinance contains the following definitions :—

"Malayan currency" means the dollar currency in circulation and constituting legal tender in the territories now comprising Malaya before or after the occupation period;

"Occupation currency" means any currency issued by the Occupying Power and in circulation during the occupation period, but does not include Malayan currency;

"Occupation debt" means a debt payable by virtue of an obligation incurred during the occupation period and accruing due at any time;

"Occupation period" means the period commencing on the fifteenth day of February, 1942, and ending on the fifth day of September, 1945, both dates inclusive, and includes any part of such period;

"Pre-occupation debt" means a debt payable by virtue of an obligation incurred prior to the commencement of the occupation period and accruing due at any time.

The relevant parts of sections 4 and 11 of the Ordinance were as follows :—

"4. — (1) Subject to the provisions of sub-section (2) of this section, where any payment was made during the occupation period in Malayan currency or occupation currency by a debtor or by his agent . . . to a creditor or to his agent . . . and such payment was made in respect of a pre-occupation debt, such payment shall be a valid discharge of such pre-occupation debt to the extent of the face value of such payment.

(2) In any case — (a) where the acceptance of such payment in occupation currency was caused by duress or coercion; or (b) where such payment was made after the thirty-first day of December, 1943, in respect of a pre-occupation capital debt, exceeding two hundred and fifty dollars in amount, which — (i) was not due at the time of such payment; or (ii) if due, was not demanded by the creditor or his agent on his behalf and was not payable within the occupation period under a time essence contract; or (iii) if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent; or (c) . . . such payment shall be revalued in accordance with the scale set out in the Schedule to this Ordinance and shall be a valid discharge of such debt only to the extent of such revaluation."

It is to be observed that in order to escape from the general rule laid down by sub-section (1), a creditor would have to establish the facts necessary to bring a payment to him within the provisions of sub-section (2).

Section 11 of the Ordinance deals with secured debts, and provides as follows :—

"11. — (1) In any case where a debt purporting to have been discharged in whole or in part by payment in occupation currency is, by virtue of the provisions of this Ordinance, deemed to be partly undischarged, and where the payment of such debt before it purported to be discharged as aforesaid was secured by a charge over property movable or immovable and such charge has, or purports to have, been discharged by the chargee or his agent . . . such discharge shall . . . be void against the charger or his personal representatives and any person claiming through or under him or them, and the charged property shall stand charged with the revalued balance of the debt and interest, if any, accrued and unpaid and to accrue thereon."

The Schedule to the Ordinance set out a sliding scale showing the value of occupation currency as compared with Malayan currency from February, 1942, to 12th June, 1945. According to this scale the value of occupation currency began to fall on January 1943, and continued to fall month by month until it became valueless on 13th June, 1945.

The facts of the case may be summarised as follows. Each of the appellants is an undivided Hindu family carrying on business as a money-lending firm, and in and before the year 1941 they lent money to various borrowers on the security of land. During the occupation period the borrowers re-paid these loans in occupation currency. At the time of these payments such currency was legal tender and a creditor could not refuse to accept it at face value and to release the security for the loan. As a result of the Debtor and Creditor (Occupation Period) Ordinance, 1948, the appellants became entitled, on 1st October, 1949, to claim further payments in respect of these debts, and to require the reinstatement of the released securities, if they could satisfy the conditions laid down by sub-section (2) of section 4 of the Ordinance. In their accounts the appellants, relying upon sub-section (2) *(b)* (ii) of the Ordinance, credited themselves as at 31st December, 1949, with sums which they would be entitled to demand from their former debtors if sub-section (2) *(b)* (ii) was applicable. When they endeavoured to enforce payment of the sums so credited, some of the creditors refused to pay the amounts claimed from them, and the appellants had great difficulty in proving the necessary facts to establish their claims. To quote from the evidence of Ramasamy Chettiar, the Manager of the P.V. Family :—

"One Andiappa Chettiar was manager during occupation period. . . . Andiappa Chettiar died in May, 1945. He died in General Hospital, Malacca — I took charge of business of P.V. Firm after liberation — I know when Debtor & Creditor Ordinance came into force — I consulted Solicitors regarding Ordinance. As to debts paid during occupation period, I was advised by Solicitors that evidence of Andiappa Chettiar would be required and that it would be better to settle claims amicably. As far as I could, I proceeded to settle claims — I did not force them unless the debtors came to some sort of settlement."

It is obvious that the only fact which could be difficult to prove under the terms of section 4 (2) *(b)* (ii) of the Ordinance was that the payment made during the occupation period had not been "demanded by the creditor or his agent on his behalf", since the date and amount of the payment would be recorded in the creditor's books.

In calculating their income tax liability for the year of assessment 1951, the appellants claimed to deduct sums of $58,929.05 and $344,465.90 respectively. These sums represented the difference between the sums originally claimed by the appellants from their debtors under the provisions of the Ordinance of 1948 and the sums which were accepted on settlement of such claims during the year 1950, that year being the "basis period" on the profits whereof the tax for the year of assessment 1951 had to be assessed.

It is convenient to set out, at this stage, the relevant provisions of sections 10 and 14 of the Income Tax Ordinance, 1947, of the Federation of Malaya. They are as follows :—

PART III.

IMPOSITION OF INCOME TAX.

10. (1) Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from the Federation or received in the Federation from outside the Federation in respect of —

(a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

PART IV.

ASCERTAINMENT OF INCOME.

14. (1) For the purpose of ascertaining the income of any person for any period from any source chargeable with tax under this Ordinance, in this Part referred to as 'the income,' there shall be deducted all outgoings and expenses wholly and exclusively incurred during that period by such person in the production of the income, including —

.....

(d) bad debt incurred in any trade, business, profession or vocation, which have become bad during the period for which the income is being ascertained and doubtful debts to the extent that they are respectively estimated, to the satisfaction of the Comptroller, to have become bad during the said period, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that — (i) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts, other than debts incurred before the commencement of the basis period for the first year of assessment under this Ordinance, shall for the purposes of this Ordinance be treated as receipts of the trade, business, profession or vocation for that period; (ii) the debts in respect of which a deduction is claimed were included as a trading receipt in the income of the year within which they were incurred; (iii) no deduction shall be allowed in respect of any debt incurred before the commencement of the basis period for the first year of assessment under this Ordinance.

The first year of assessment under the Ordinance was the calendar year 1948 and the basis period for that year of assessment was the immediately preceding year, 1947. The appellants' claim was rejected by the respondent and the appellants appealed to the Board of Review.

The Board of Review dismissed the appellants' appeal, holding that the debts in respect whereof the deductions were claimed were incurred before the 1st January, 1947, and that the deductions were therefore prohibited by the third proviso to section 14 (1) *(d)* of the Income Tax Ordinance.

Their Lordships must now refer to a document upon which counsel for the appellant strongly relied. It is headed "Agreed Statement of Facts" and sets out the facts in regard to one transaction which has throughout been agreed by both sides as being typical of all the transactions which fall for consideration. This document was put in as Exhibit "A" at a hearing of the appellant's appeal to the Board of Review and it must be quoted in full:—

"On 21.10.41 Pana Vana Firm of Malacca, a firm carrying on the business of rubber estate owners and moneylenders, hereinafter referred to as 'The Creditor' lent a sum of $26,000 to Yow Cheng Luan of Malacca, hereinafter referred to as 'The Debtor' on a promissory note secured by the deposit of Pahang Grant for Land No. 1683.

2. During the occupation on 24.6.43 and 26.9.43 the Debtor repaid the sums of $10,000 and $6,000 respectively.

3. On 26.9.44 the Debtor repaid the sum of $10,000 being the balance due on the loan.

4. Under the Debtor and Creditor Ordinance only the payment of $10,000 falls to be revalued and on the coming into force of the Ordinance on 1.10.49 the Debtor became liable to pay to the Creditor the sum of $9,285.71 being the difference between the sum of $10,000 and its revaluation as provided by the Ordinance.

5. At the same time the Creditor entered a caveat against dealings with the land held under Pahang Grant for Land No. 1683 and made an entry in his books on 31.12.49 debiting the sum of $9,285.71 against the Debtor.

6. The Creditor made demands to the Debtor from time to time for payment of the said amount of $9,285.71 and on 22.8.51 an amicable settlement was arrived at between the Creditor and the Debtor whereby the Creditor agreed to accept and accepted the sum of $4,700 in full satisfaction of the debt of $9,285.71."

It is common ground that the date 22nd August 1951 in paragraph 6 of the Statement should be 22nd August 1950. The payments mentioned in paragraph 2 are not referred to in the later paragraphs because they were made before the 31st December, 1943, and consequently they could not be brought within section 4 (2) *(b)* of the Debtor and Creditor Ordinance. Their Lordships will consider later the effect of the agreement embodied in this Statement.

The appellants appealed to the High Court, Kuala Lumpur, against the decision of the Board of Review. In the appeal of the P.V. Family Briggs J. allowed the appeal with costs as regards the capital — as distinct from the interest element of the loss claimed by the appellants.

By agreement between the parties, the PL. RM. Family Appeal fell to be decided in accordance with the decision in the P.V. Family Appeal and a corresponding order was made in that Appeal.

At the hearing the Solicitor-General made an admission to which the learned Judge attached great importance. It is unnecessary to set out the terms of that admission, as it was withdrawn in the Court of Appeal, and before the Board Mr. Salt for the appellants very properly stated that he could not now rely on it as an admission.

The present respondent appealed to the Court of Appeal, Supreme Court of the Federation of Malaya, and that Court set aside the order of Briggs J., and ordered that the assessment made by the respondent should be restored. Hence the present consolidated appeals.

It is convenient to consider only the position in regard to the balance debt of $10,000 repaid on the 26th September, 1944, by the Pana Vana firm and mentioned in paragraph 3 of the Agreed Statement of Facts, since the decision in regard to that debt will admittedly cover all the other debts now in question.

Mr. Salt contended that paragraph 4 of the Agreed Statement established the existence, on the 1st October, 1949, of a debt of $9,285.71 owing from the debtor to the creditor under the Debtor and Creditor Ordinance; that this debt was rightly entered at its full face in the appellant's books on 31st December, 1949; and that the difference between that sum and the sum of $4,700 accepted on 22nd August, 1950, in full satisfaction of the debt was a loss incurred by the appellants during the basis period 1950; accordingly it ought to be deducted in computing the liability of the appellants to tax for the year of assessment 1951.

Putting aside any question as to the precise meaning of para. 4 of the Agreed Statement of Facts their Lordships feel no doubt that this contention is ill-founded because it assumes the existence of a "loss" which in truth never took place. It is impossible to say that any debt became owing to the appellants on 1st October, 1949. No evidence has been given, in any Court, that the payment of $10,000 made to the appellants on 26th September, 1944, was not demanded by the appellants or their agent on their behalf, and it was incumbent upon the appellants to prove this fact before they could bring themselves within the terms of section 4 (2) *(b)* (ii) of the Debtor and Creditor Ordinance. All that the appellants obtained on 1st October, 1949, was a right to be paid $9,285.71 on proof of this fact, and their Lordships can see no justification for the entry made in the appellants' books on 31st December, 1949. There is no reason to suppose that the claim in question was worth more, on 31st December, 1949, than the sum of $4,700 which was ultimately accepted in full settlement. The idea that the appellants suffered any loss when they recovered this sum arises from the fallacy of treating the right set up by the Ordinance and the recovery of the $4,700 as if they were separate matters affecting the history of one of the appellants' assets: whereas, in reality,

the right and the recovery were indistinguishable parts of a single process. All that happened in the year 1950 was that the appellants asserted a claim which was of very doubtful value in the absence of material evidence, and they recovered $4,700 as a result of that claim.

Mr. Salt, however, relied on the words "became liable to pay" in paragraph 4 of the Agreed Statement. Their Lordships do not think it possible to treat these words as an agreed admission that an actual debt of $9,285.71 was due on the 1st October, 1949. It is much more probable that paragraph 4 was only intended to deal with a matter of arithmetic, stating the sum which the debtor would be liable to pay on the assumption that the case fell within section 4 (2) *(b)* of the Ordinance of 1948. Their Lordships find it difficult to suppose that the parties regarded the paragraph as being (in effect) an admission that no demand for repayment had been made by or on behalf of the creditor. The Agreed Statement was put in before Ramasamy Chettiar gave evidence, and if that document had contained the admission just mentioned it would have been quite unnecessary for the appellants to call him as a witness. Further, the admission, if made, would apply to every debt included in the total claim of the appellants, and it is unlikely that the appellants would have accepted such small sums in settlement from so many debtors of whom it could accurately be said that they were "liable to pay" substantially larger ones. For these reasons para. 4 must be treated as no more than an arithmetical statement of the full sum potentially due.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Bulcraig & Davies; Charles Russel & Co.*

TOH CHING KWAN v. NG AH KAK & ANOR.

[A. C. J. (Wilson J.) July 8, 1955]

[K. L. — Civil Appeal No. 5 of 1955]

Landlord and Tenant — Control of Rent Ordinance, 1948 — Control of Rent (Amendment) Ordinance, 1949 — "Premises" — Meaning of — Whether it includes land upon which a building was completed after January 13, 1948 — Notice to quit — Tenancy from year to year.

This was a claim for possession of a piece of land upon which a building had been erected. The appellant had built the house on the land in 1952 with the consent of the then landlord. He went into possession of the land under an agreement which purported to give him the right to occupy the land for 20 years at a rent of $10 per month. A notice to quit had been sent to the appellant on March 12, 1954 to take effect on April 30, 1954. The respondents did not obtain the consent of the Rent Assessment Board before filing the plaint in the Sessions Court. The appellant appealed against the decision of the Sessions Court, giving possession to the respondents.

Held: (1) the word "premises" in the Control of Rent (Amendment) Ordinance, 1949, does not include land upon which a building was completed after January 31, 1948; (2) the agreement under which the appellant went into possession of the land was null and void as it had not been registered but as the appellant had gone into possession of the land and occupied it and paid rent, a tenancy from year to year was thereby created, although the rent was to be paid and was paid monthly; (3) therefore the notice to quit that was given was bad.

MAGISTRATE'S CIVIL APPEAL.

D. G. Rawson for the appellant.

N. A. Marjoribanks for the respondents.

Cur. Adv. Vult.

Wilson J. : — This was a claim for possession of a piece of land on which it was alleged in the statement of claim that there was an unauthorised building, and it was alleged that any title the defendant may have had had been determined by a notice to quit sent on the 12th March, 1954, to take effect on the 30th April, 1954. It is quite clear that the defendant had built the house on the land in 1952 with the consent of the then landlord. He went into possession of the land under an agreement which purported to give him the right to occupy the land for twenty years at a rent of $10 per month. The plaintiffs did not obtain the consent of the Rent Board before filing the plaint in the Sessions Court. The facts are fully set out in the judgment of the learned President and I do not find it necessary to refer to them further.

It has been argued that by reason of the definition of "premises" contained in the Control of Rent (Amendment) Ordinance No. 61 of 1949 the Control of Rent Ordinance No. 6 of 1948 applies to the land in question, even though the building was erected after the 31st January, 1948. I cannot agree with this contention. Although "premises" includes land it only includes land upon which a building has been erected with the consent of the landlord, but a building does not include a building completed after the 31st January, 1948. In my opinion, "premises" does not include land upon which a building was completed in 1952.

The agreement under which the appellant went into possession of the land was never registered and was null and void. However, the appellant having gone into possession of the land and occupied it and paid rent, I am of opinion that a tenancy from year to year was thereby created, even though the rent was to be paid and was paid monthly